



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 8, 1996

Mr. Tom O'Connell
Criminal District Attorney
Collin County Courthouse
210 S. McDonald, Suite 324
McKinney, Texas 75069

OR96-0154

Dear Mr. O'Connell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37341.

The Collin County District Attorney's Office (the "office") received a request for "any and all tangible items, including but not limited to documents, letters, reports, investigation results, photographs, video-tapes, etc., concerning a charge of possession of marijuana, occurring in 1994 involving Steven Troy Chenault." You claim that the request is vague and ambiguous and does not specify the exact identity of the records sought. You further claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated

that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

We note that in the most recent legislative session, the Government Code was amended to include a provision stating that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5134 (codified at Gov't Code § 552.222(b)); *see also* Open Records Decision No. 561 (1990) at 8.

However, a request for records made pursuant to the Open Records Act may not be disregarded simply because a citizen does not specify the exact documents she desires. Open Records Decision No. 87 (1975). In this regard this office believes that the requestor has reasonably specified the types of records she is seeking from the office: she has asked for all tangible items related to one charge against a named defendant. The request is neither "overbroad" nor "vague." Therefore, we will address the exceptions to disclosure you have raised.

Section 552.108(a) excepts from disclosure records of law enforcement agencies or prosecutors that deal with criminal investigations and prosecutions. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision Nos. 611 (1992), 216 (1978).¹ In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986). This case has been closed since February of 1994. Therefore, only if release of the documents will unduly interfere with law enforcement or crime prevention will section 552.108(a) except the documents from disclosure. When claiming that the release of requested documents meets this test, the agency claiming the exception must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3. To fulfill this test, you argue that "[r]evealing the names of the numerous officers and jail personnel involved could place them at risk for retaliation." This conclusory statement, without more, is insufficient to meet the test for closed cases

¹You argue that section 552.108(a) does not itself distinguish between cases that are active and those that are closed. However, as is clear from Open Records Decision No. 216 (1978), this office followed the mandate in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) in its interpretation of section 552.108(a).

under section 552.108(a). Therefore, the office may not withhold the documents under section 552.108(a).

Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution" This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). The test under section 552.108(b) is the same as that under section 552.108(a) for closed cases. Consequently, as we have concluded that section 552.108(a) does not except the requested information from disclosure, the same is true for section 552.108(b).

Finally, you claim that the information contained in the requested documents relates to an event that would cause undue embarrassment and/or publicity to the defendant. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

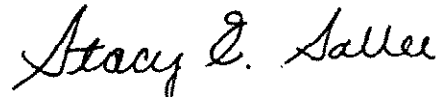
Section 552.101 also encompasses the constitutional right to privacy, which protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

We have reviewed the documents and conclude that information in one of the documents, a Medical Screening Form, implicates the defendant's common-law or constitutional privacy rights. We have marked the information that must be withheld

under section 552.101. The office may not withhold the remainder of the requested information under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 37341

Enclosures: Submitted documents

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